

The Law of Intestate Succession: Exploring Attitudes Among Non- Traditional Families

Final Report

Authors: Gareth Morrell, Matt Barnard and Robin Legard

Date: 31st March 2009

Prepared for: The Law Commission



Contents

1	Introduction	4
1.1	Background	4
1.2	Research objectives	4
1.3	Methodology	5
	Sampling and recruitment	5
	Data Collection	6
	Analysis	7
	Ethics	7
1.4	Terminology	7
2	Testamentary freedom	9
2.1	Support for testamentary freedom	9
2.2	Challenging a will	10
3	Intestacy	12
3.1	Underlying principles	12
3.2	Spouses and Partners	13
	Marriage and Civil Partnership	13
	Unmarried partners	14
3.3	Children, descendants and other dependants	16
	Children in non-traditional families	17
	Adult descendants	17
3.4	Parents and Siblings	17
3.5	Other relatives, friends, carers and companions	18
3.6	Evolving views	19
4	Mechanisms	22
4.1	Distributing the estate	23
	The family home	24
5	Conclusions	26
6	Appendices	28
6.1	Appendix 1 – Topic Guide	28
6.2	Appendix 2 – Vignettes	35

1 Introduction

1.1 Background

The Law Commission is currently undertaking a general review of the law of intestacy and the legislation under which family members and dependants may apply to court for reasonable financial provision from the estate of a person who has died. This study will contribute to the Commission's evidence-gathering process in advance of making recommendations for reforming the law in this area. Currently, under the intestacy rules any surviving spouse or civil partner will in most cases receive everything. In larger estates, anything left over is shared by the surviving spouse or civil partner and the deceased's children. Other relatives only benefit if there are no children. Unmarried cohabitants are not automatically entitled to anything but they (and anyone else dependent upon the deceased) can go to court to claim reasonable financial provision under the Inheritance (Provision for Family and Dependants) Act 1975.

This area of law was last reviewed by the Law Commission in the late 1980s. At that time most of the Commission's recommendations were enacted but the principal recommendation, that a surviving spouse should inherit the entire estate in any case, was not. Since that review was carried out and, indeed, since the 1975 Act was drafted, there have also been changes in family structures and the patterns of ownership of property that add weight to the argument for a re-examination of the law and the principles behind it. A recent research study suggests that more than 27 million people in England and Wales have not made a will and that unmarried couples are most at risk of losing property, personal possessions and cash if their partner dies without leaving a will.¹ Furthermore, current intestacy laws do not always account for 'non-traditional' family structures in cases where the parents of a child may no longer live together or where children from different parents are considered part of the same family. The research also shows that it is individuals most at risk of losing out under the current intestacy laws that are least likely to have made a will.²

1.2 Research objectives

The broad aim of this study was to explore the views of people from 'non-traditional families' on what should happen in cases of intestacy. Studying these attitudes and the reasons behind them will assist the Law Commission to construct sensitive and evidence-based recommendations for reform of the law in this area. This overarching aim was broken down into a number of specific research objectives:

- Map the range of views on who should decide what happens to an individual's estate when they die in cases of intestate succession and when a will is made;
- Map the range of views on rules determining who gets a share of a particular estate and who can challenge those rules;
- Map the range of views on what should happen to different assets from a particular estate;
- Identify the underlying principles that participants believe should determine the rules for intestate succession and the circumstances in which these can be challenged;
- Describe attitudes towards a range of different mechanisms that allow the translation of the above principles into law;
- Describe attitudes towards how the different assets of an estate should be distributed.

¹ Brooker S. (2007) *Finding the Will: a Report on Will-Writing Behaviour in England and Wales*, London: National Consumer Council

² *Ibid.*

1.3 Methodology

Qualitative research and, in particular, focus groups were considered an appropriate methodology for mapping the range and nature of attitudes and to explore the reasons behind them. Furthermore, public attitudes towards intestacy in general and of non-traditional families in particular are relatively unexplored areas. Focus groups allow a broad range of views on such an unexplored area to be mapped more efficiently than depth interviews, which would require a greater level of knowledge of the area to design. This method of data collection is not always appropriate for the discussion of certain issues. However, while discussing intestacy has the potential to raise some sensitive issues, participants were asked to reflect on broad principles about what should happen in particular scenarios rather than talk in depth about their own experiences, although it should be noted that participants did voluntarily bring their own experiences to the discussions.

The research team undertook some initial familiarisation in order to understand the particular issues associated with intestacy. Existing research was briefly reviewed as was additional literature provided by the Law Commission. The team also discussed the issues with the Law Commission, particularly within the context of further developing and refining the objectives and in developing the fieldwork tools. The object of this familiarisation was to gain a clear understanding of the issues involved in order to ensure that they could be communicated in a comprehensible way to members of the public and to make sure that the data gathered and the subsequent analysis generated analytic outputs that are genuinely of use to the Commission in fulfilling its objectives for the project.

Sampling and recruitment

The primary sampling criteria for the study population was for participants to be from 'non-traditional' families, defined as including:

- people who have married more than once
- people who have children from more than one relationship
- people who have step-children
- cohabitants
- same-sex couples

An issue of specific interest to the research was the attitudes of individuals in same-sex relationships, particularly in light of recent changes to the legal framework for civil partnerships. It was decided that a group composed entirely of individuals from same-sex couples would allow researchers to explore these potential differences in greater depth. The above criteria for participants taking part in the study are, however, non-exclusive categories and not the only factors that might affect people's views on intestacy and so were not the only criteria used to develop the specification of the groups. Consequently, in order to capture the range of views held by those from non-traditional families, additional sampling criteria were used to develop the composition of each of the four groups. Firstly, consideration was given to whether people had or had not made a will. The majority of people in England and Wales have not made a will, some because they are yet to get around to it and others because they have never given the issue any thought.³ The implication of this is that people who have made a will, might engage with the issue in a different way to the people who have not, and therefore may have different reasons for their views on intestacy and related issues. Equally, an experience of intestacy through a friend or relative is also likely to affect the way people think about the issues. Finally, ensuring that the sample contained diversity with

³ *Ibid.*

respect socio-economic class was also considered important as research suggests that will-writing behaviour is affected by an individual's wealth, income and occupation.⁴

The use of these additional criteria enabled the research team to ensure the widest possible range of views was being captured in the focus groups. This meant that four focus groups could be conducted with the following specification:

- Group 1 - Individuals from same-sex couples, mixed age and gender
- Group 2 - Individuals from other non-traditional families that have experience of intestacy, mixed age and gender
- Group 3 - Individuals from other non-traditional families from ABC1 socio-economic class, half that have made a will and half that have not, mixed age and gender
- Group 4 - Individuals from other non-traditional families from C2DE socio-economic class, half that have made a will and half that have not, mixed age and gender

A range of potential sampling frames to select participants from were investigated. The team concluded, however, that the most efficient way of generating a clustered sample that includes people with the characteristics set out above was to use a recruitment agency. Using a recruitment agency is a standard industry approach to recruiting for focus groups and is an efficient way of generating clustered samples. The disadvantage of recruiting in this way is that there is a potential bias in that participants are recruited from highly populated areas. However, in the case of this research, the underlying aim of the study was to map the range of views existing within particular sub-groups of the population and using recruitment agencies enabled this to be done in a cost-effective way. The recruitment agency used was an organisation NatCen has used in the past and one that meets our quality and ethical standards.

Recruiters were given a detailed sample specification and additional information about the project prior to contacting potential participants. Mixed methods were used to identify potential participants: existing recruitment lists of organisations with whom the recruiter has previously worked were consulted and where necessary recruitment also took place on the street. Participants were recruited from four different parts of London and the groups took place in locally situated, neutral community venues. Each group was composed of between seven and 10 participants. To aid recruitment each participant was offered a £30 incentive to take part. This is standard practice across the research industry and the level of incentive is also a standard amount.

Data collection

The focus groups were conducted using non-leading, responsive questioning. Answers were fully probed to ensure that all the relevant issues were explored in full. A topic guide (see Appendix 1) reflecting the objectives of the research was developed to help the facilitators structure the discussions. Consideration was given to the appropriate language to be used to introduce complex legal issues and ensure that all participants fully understood the nature of the discussion and could fully engage with the issues. To help introduce a number of these key issues, a series of vignettes (see Appendix 2) were developed as stimulus material and introduced to participants by a second facilitator. Groups were then asked to comment on the scenario described in the vignette and a number of variations on the same theme. The vignettes were introduced at different times in each group as it was sometimes more appropriate and necessary to use them earlier in proceedings in some groups and not others. The groups were digitally recorded and transcribed verbatim.

⁴ *Ibid.*

Analysis

The first step in the analytical approach adopted for this study was for researchers to familiarise themselves with the transcripts of the discussion groups. Following this a brainstorming session was held with the research team and member of the Law Commission research team to develop an analytical framework detailing the key issues to be explored further. A series of thematic charts related to these issues were developed in which key elements of the verbatim text were systematically and comprehensively summarised. Descriptive elements were then identified allowing researchers to use a question-based approach to develop categories of viewpoints on particular issues. Finally, the transcripts were fully interrogated to ensure that the full range of views was represented within the categories that had been developed. Some analysis was also conducted on the structure of the data exploring how views were formed and how they changed throughout the course of the discussion.

It should be noted that the analysis did not find any significant differences between the groups. This is not to say that the sampling criteria used had no influence on participants' views but rather that this allowed the researchers to explore a wide-range of views of people from non-traditional families. In the case of this research, however, we have been cautious in terms of generalising as the size of the study meant that there was a limit to the number of relevant criteria that could be reflected in the sampling strategy. Consequently, there was a limit to how well the diversity of the views captured by these groups reflects the full range of views held by people from non-traditional families. Nevertheless, the study has produced some robust and informative findings that will help the Commission in its objective of making recommendations on the basis of a strong evidential basis. In addition, the findings will be used to inform the design of further research on these issues to be conducted by NatCen and academics at Bristol University, in partnership with the Law Commission and funded by the Nuffield Foundation. This project will comprise a large-scale quantitative survey that will be followed up by 40 qualitative depth interviews.

Ethics

At the heart of NatCen's procedures for ensuring its research is conducted ethically are the principles of informed consent and confidentiality. In terms of informed consent, we ensured that all participants were aware of the subject matter of the research, what their participation required of them and that participation was entirely voluntary. Potential participants were provided with a project summary by the recruiter and those that did take part were provided with further information following the group discussions, such as the contact details of useful organisations and a summary of how intestacy and family provision rules currently work. In terms of confidentiality, this research report does not identify any individuals. It was also explained to participants that a member of the Law Commission would observe each of the groups. To make sure that these provisions were in place, NatCen has recently revised its ethics governance procedure in line with the requirements of the Economic and Social Research Council and Government Social Research Unit Research Ethics Frameworks.⁵ As such, a new Research Ethics Committee (REC), with members from senior NatCen staff, external research experts, and external professional experts ('lay people') has been set-up. This study received ethical approval from the REC.

1.4 Terminology

A set of specific legal terms are often used to discuss issues related to intestacy and family provision. As far as possible, researchers aimed to move away from this language when

⁵ The Economic & Social Research Council (2005). *Research Ethics Framework*; Government Social Research Unit (2005) *GSR Professional Guidance: Ethical Assurance for Social Research in Government*. Cabinet Office.

introducing the issues in the discussion groups and use neutral, everyday language that not only would the participants understand but that would also allow them to use and develop their own terminology throughout the discussions. Consequently, incorrect legal terminology and, in some cases, misapprehensions of the law are found in the transcripts. This data is still of value, however, and the participants' language has been retained in quotes used to illustrate a particular perspective. Despite this, for consistency throughout the report it is useful to clarify how certain phrases and relationships will be referred to in the discussion of participants' views in the following chapters.

Firstly, the term spouse is used to refer to the married partner or registered civil partner of the deceased. Where the term partner is used it is referring to a person who was in a relationship with the deceased at the time of death but not officially recognised through marriage or civil partnership. The term cohabitant refers to partners that are routinely living in the same accommodation. Where the terms are used together as 'spouse and partner' or 'spouse or partner', this refers to whatever circumstances the participants felt that an unmarried partner could be treated equally to a spouse in the intestacy laws for the purpose of illustrating a particular point comparing, for example, attitudes towards the entitlements of this group in cases of intestacy as compared with those of another group such as children. This use of the terms jointly is not meant to equate the two terms or obscure the different views participants had towards them, although it should be noted that participants themselves often used the terms interchangeably. Where the terms spouse and partner would not be used together would be in a discussion of the relative entitlements of a spouse against those of an unmarried partner. The term 'children' is generally used to refer to descendants of the deceased that are not yet adult; older children are described as adult descendants, though some participants made no distinction between minor and adult children when referring to the children of the deceased.

2 Testamentary freedom

The focus of this study is on the law of intestate succession. However in order to set the context for this discussion participants initially asked for their views on the principle of testamentary freedom. This section explores the reasons why people felt that testamentary freedom was important but also the range of circumstances in which some participants felt that it should be possible to challenge a will. As part of these discussions a number of principles were highlighted that reoccurred in the discussions about intestacy, indicating that the two issues were closely linked for participants.

2.1 Support for testamentary freedom

The question of whether or not there should be a right to testamentary freedom prompted emotional reactions. The freedom to decide who to pass one's wealth onto was linked to a wider agenda of individualism and 'human rights', and indeed this terminology was sometimes used when discussing the issue. It was also expressed in terms of a financial freedom that incorporated the idea that people should have the right to decide what to do with the money that was 'theirs' and that they had 'earned'.

It's definitely her choice because she earned the money during her life and whatever she says she wants to do in her will has definitely got to be done. I mean say if someone chose to do something else with her money, it's basically robbing her. (Group 1 – Vignette 1)

Reinforcing the concept of rights was the belief that the state's role should be supporting citizens and not telling them what to do. This was heightened by the fact that inheritance was seen as operating within a personal arena, rather than a public one, and therefore was outside the bounds of the state's proper jurisdiction.

You don't live your life to work and then the Government tells you what you can do. You should be able to do what you want with your money. (Group 1)

The fact that the issue of testamentary freedom tapped into wider debates about the role of the state and the nature of financial freedom was illustrated by some of the potential implications of undermining it. What seemed to be at issue here was not so much the practicalities of control over the destination of one's goods and property after death, but a sense of security in the natural order of society.

I think only under exceptional circumstances should the will be overruled because you can't revise what someone's words are later on. You don't revise... we're not supposed to revise history. (Group 1)

Underlying support for testamentary freedom was what might be called a 'reasonable assumption', or more accurately an 'assumption of reasonableness'. When presented with vignettes about people not leaving their money to offspring or grandchildren, participants spontaneously invented scenarios that explained why the vignette characters were in fact acting reasonably.

I was thinking like what if she just absolutely hated her kids and they were like totally worthless and she didn't want to leave them a penny just as a punishment, and that's her Will, that's her wishes. (Group 1)

This led to the argument that even apparently 'unreasonable' decisions should be respected because it would not necessarily be possible to ascertain the reasons why someone had made a decision, and therefore it should be assumed that they were reasonable.

Even if it's ridiculous, like leaving it to their dogs or whatever, then it should be done, just because we don't know the full circumstances and there will be one person missing in the court explaining reasons, unless they justify it in their will. So, I think it should be carried through, as ridiculous as it maybe. (Group 1)

2.2 Challenging a will

Despite most participants initially expressing a strong belief in testamentary freedom, when explored further it became apparent that it was not always viewed as absolute. There were two main circumstances in which it was felt it should be possible to challenge a will. The first was when there were reasonable grounds for believing that the will did not represent what the deceased wanted to happen. The most obvious reason for this would be because they had been put under pressure or 'brain washed' into signing over their wealth to a particular individual or organisation. This was seen as a particular risk for older people, and allowing wills to be challenged in these circumstances was seen as potentially providing some protection against people like serial killer Harold Shipman who were seen as taking advantage of vulnerable individuals. Another obvious reason given why a will might not represent a person's wishes was if they were not of 'sound mind' because they were mentally ill when they made it.

There were also less obvious reasons given for why someone's will might not represent their wishes and therefore why it should be open to challenge. One was that there could be a long time between the point when an individual made their will and when they died, which led to the suggestion that a will should have an 'expiry date' to ensure that it was updated and represented the individual's current wishes. The other reason was that it was felt that people's emotions can be volatile and so they might make decisions about their will when they were in a state of mind that did not reflect their more settled, longer term feelings.

Sometimes your emotions at the time, you can be very angry and then you're really spiteful and you put something, and then maybe on another day you might be more generous. (Group 1)

Finally it was recognised that people's circumstances might change between the time they wrote their will and when they died, and that therefore the will would not longer represent what they would have wanted to happen. This was seen as possible due to changes to the nature of their estate (for example having accumulated more wealth) or because of the circumstances of potential beneficiaries had changed (for example offspring being no longer as financially secure as they had been).

The other circumstance in which it was felt that wills should be open to be challenged was if the decisions of the deceased were in some sense clearly 'unreasonable'. This might simply be because they had written their will in response to a 'mad whim', or because they had decided to leave everything to a 'gold digger' because of 'sexual infatuation'. People's wills could also be seen as unreasonable if they were felt to be 'unfair'. This could be on the grounds that someone excluded from the will had financially contributed to the deceased's wealth directly or indirectly (for example a spouse's or partner's contribution to acquiring a family home), or because they had 'earned' the right to a share of the estate, for example through the efforts they had made in terms of caring for the individual when they were alive. The argument was also made that it was unfair' to cut children out of wills because of the contribution they had made in 'enriching' the lives of their parents.

Another reason why someone's will might be 'unreasonable' and therefore should be open to challenge, was because a potential beneficiary was disabled or vulnerable in some way. The issue here was that the potential beneficiary was unable to look after themselves (for example because of their age), and that the alternative was that the state would have to look after them. This was

seen as a particular issue for elderly spouses or partners because their vulnerability was combined with the fact that life expectancy was seen as rising, which meant that they would potentially face a longer old age in poverty if not properly provided for in their late spouse's will.

However, not all participants agreed that these circumstances were enough to override the right to decide what should happen to one's wealth after death. Some maintained that if people were of a 'sound mind' when they made their will, their wishes should be honoured irrespective of any hardship this caused. Interestingly, even where it was thought that there were circumstances where complete testamentary freedom should not apply, the discussion focussed on the ability to *challenge* a will, rather than having rules that stipulated how wealth should be passed on and so guiding the drafting of wills. This reinforces the fact that the concept of individualism appeared to be the default starting point for participants' thinking.

3 Intestacy

3.1 Underlying principles

Perhaps not surprisingly, the discussions that participants had in the focus groups tended not to be about abstract principles, but rather revolved around practical questions about what should happen in particular cases. In part this was because the research team used vignettes to help focus discussion, but even taking this into account it was noticeably difficult to move the debate on to the principles underlying people's beliefs. In part this reflects the subject matter, which by its nature involves emotional issues and complex ideas about competing interests. Nevertheless it was possible to identify a number of core issues that participants felt to be important to consider when distributing the wealth of someone who died intestate:

- the deceased's wishes;
- closeness and legitimacy of a potential beneficiary's relationship to the deceased; and
- responsibility of the deceased to their children.

In reality participants often equated two or more of these principles, for example, making assumptions that the 'next of kin' (often the spouse or partner) would be the person best placed to know the deceased's wishes and would 'automatically' look after the interests of the children of the deceased.

I think it should go all to the spouse, automatically the mother would not let her child... the biological mother would not let her child suffer at any cost. (Group 1)

Where these principles began to be distinguished was when assumptions about beneficiaries' behaviour were challenged. These situations illustrated the fact that there were a number of principles at work which, in some cases, could clash.

F1: I just think maybe, provision should be put towards the children, some provision.

F2: But I think that they're her children so she would always look after them.

F1: I know but if she gets married again...then she doesn't leave a will and then they don't [get anything] (Group 3).

In addition to the core issues identified above, participants put forward additional factors to be taken into account, particularly in situations where it was not clear how the core principles should apply:

- the contribution a potential beneficiary has made to the estate;
- the importance of maintaining existing commitments/anticipated contributions;
- the needs of the potential beneficiary and/ or the impact of the distribution of wealth;
- the origin of the wealth;
- the level of wealth; and
- the assumption that wealth should remain within families and pass 'down' through generations.

The following sections discuss how these principles were applied to different kinds of potential beneficiaries.

3.2 Spouses and partners

In order to be entitled to share in the deceased's estate, participants considered that a spouse or partner should be committed to fulfilling the deceased's obligations and responsibilities, primarily to his or her children or other dependants. In intestacy cases where the deceased left no surviving children or other dependants there was a belief that the spouse or partner should be entitled to the entire estate on the basis that they had entered into an equal partnership with the deceased and should therefore retain what had belonged to the other person in that partnership. While there was general agreement that these two elements were the broad grounds on which a spouse or partner might be entitled to inherit, there was a wide range of views with respect to the circumstances in which this could be considered reasonable to assume. In essence these debates centred around the presumed closeness of the relationship of a spouse or partner to the deceased and the degree to which it could be assumed that they would fulfil the deceased's wishes, specifically in looking after any children.

Marriage and Civil Partnership

One view of marriage or civil partnership was that it was a sufficient condition for entitlement to the deceased's entire estate, as it indicated the necessary level of commitment in cases where the deceased left no surviving children. In cases where the deceased did leave surviving children, opinions varied as to the entitlement of the spouse. One argument was that the intestacy rules should assume that the spouse would fulfil the deceased's wishes in terms of caring for the deceased's children. This was particularly true if the children were from the same relationship, though in some cases participants felt this would be true even in cases where there the deceased left surviving children from another relationship. An alternative view, however, was that the existence of children from another relationship should affect how an estate should be distributed as it could not be assumed that a surviving spouse would automatically look after children who were not his or her own.

Participants also identified exceptional circumstances in which a spouse or civil partner might not be considered to be entitled to share in the deceased's estate, for example in cases in which marriages were entered into deceitfully or that were motivated by greed. In these cases, there was a concern that the surviving spouse or partner would have no interest in fulfilling the deceased's wishes and that other potential beneficiaries might lose out. There was also concern that if the whole estate were to go the spouse it would pass out of the family. This was not a uniform concern, however, as the counter argument was that 'blood' relatives should not be eligible if there is a surviving spouse. A final concern over the automatic entitlement of a spouse was if their behaviour undermined their relationship, for example, if they had been having an affair while the deceased was still alive.

But this should still be the ability to contest that, because you don't know what Martha and Ben's relationship was before she died... Ben could be playing the field.. You know if people know about it, and it comes to light then [he is] not entitled to it. (Group 2 – Vignette 2)

There were also concerns that giving an automatic entitlement to a spouse or civil partner could be unfair to other potential beneficiaries in cases where a couple had not legally divorced but were separated or estranged.

My aunt that didn't leave a will...they say it's got to [go to the] next of kin and they said it was her husband because they hadn't divorced. Now he was long, long gone, long gone; and they still couldn't give, release that money to her daughter, where this man had been maybe the other side of the world. (Group 2)

Underlying this concern was the belief that if a married couple or civil partners were living apart permanently then they were no longer close and therefore the surviving partner should not be entitled to share in the deceased's estate. However, this prompted a debate over what time period should be considered long enough for a separated spouse to no longer be entitled to share in their partner's estate. Although a misapprehension of the law, one view was that there already was a fixed period of five years of separation that made a spouse ineligible to challenge a will and that this might be something that could also be considered in cases of intestacy. However, it was also acknowledged, that it might be difficult to decide a set length of time, particularly as in some shorter-term separations couples may be attempting to resolve their differences. Consequently they might still be close and it might still be reasonable to assume that they would be the best person to honour the deceased's wishes or fulfil their obligations, particularly if the couple had children together. It was also argued that in some relationships, even a marriage or civil partnership, living together is not always a necessary condition for a functioning and committed relationship.

But there's a lot of people that I know within the last five years that have, that are married to each other, yet they live in separate abodes but they're still in a relationship. (Group 4)

Unmarried partners

Two views were expressed as to whether an unmarried partner should be treated the same as a spouse or civil partner: the first that they should not be treated the same and the second that they should be treated the same but only under certain conditions. The first view assumed that marriage was the only way in which a commitment to a relationship could be demonstrated. Going one step further, it was argued that marriage itself would be devalued by treating unmarried partners equally in cases of intestacy.

I think marriage should be an issue, it shouldn't just be your partner, even if you've lived with them for 40 years I don't care, it should be a married partner...if there's no laws that differentiate between people that are married and people that are not married, then basically go back and change the law and say actually no point in marriage (Group 3)

On the other hand, a number of reasons were discussed for why unmarried partners, in the right circumstances, should be treated equally in cases of intestacy. One argument was that the intestacy rules had to reflect the fact that fewer people are getting married than used to be the case and fewer were staying married. Another argument was that for some people it was not possible to enter into the formal legal commitment of marriage or civil partnership if, for example, they were in a relationship with somebody their parents did not approve of.

In contrast to these more pragmatic arguments, it was also argued that an unmarried partner should be treated equally because relationships do not need or should not need a formal or legal commitment. From this perspective it was felt that just because couples do not see the need to 'sign a piece of paper' or viewed marriage as 'only for religious people', they should not be discriminated against under the intestacy rules.

My partner and I lived together for twenty years, as partners. If I had died then my own children, who have now grown up, could have challenged her rights to the house. Because I felt very strongly, that I shouldn't have to get married for a legal reason... I felt that was wrong, because I had chosen to be a partner and I was quite happy with that. But there could have been tremendous complications further down the line, had we not been married. (Group 2)

Despite the range of arguments in favour of treating unmarried partners the same as married or civil partners, there was general agreement that an unmarried relationship would have to satisfy certain conditions in order to be considered serious. The first key indicator was cohabitation. Some of the participants, including people who were themselves cohabiting, saw this as the most crucial indicator of commitment to a relationship and something equal to or greater than the commitment represented by entering into a marriage or civil partnership:

Yes because for some people that is a commitment, living together...it's just as much a commitment as people that get married. (Group 1)

Living together was, however, considered a necessary but not always a sufficient condition for unmarried partners to be treated in the same way as married couples or civil partners. An additional indicator was shared parental responsibility, which was also significant because it made it reasonable to assume that the surviving spouse would also share the deceased's wishes and obligations towards the children and therefore be willing to fulfil them. As with a married couple, however, the issues of distribution become more complicated if the deceased also had children from another relationship.

I was going to use my example where the child wasn't the partner's, and then they you know the person dies, you've lived with them for ten years but you're not married...if you've devoted 10 years but you're not married and the children could say well, who are you? You're just someone who lives with my mum or dad, you're not, you know you're not in the blood line. (Group 3)

Where scenarios similar to this were discussed, participants felt that the cohabiting partner should have some recourse to challenge the intestacy rules that passed the deceased's estate entirely to the deceased's children. However, in this case, and in other cases of cohabitation where the couple do not have children the length of the relationship was raised as an important factor. Suggestions for what was a suitable minimum period ranged initially from one year to 10 years, though through discussion this range tended to narrow, with one year being seen as insufficient and seven to 10 years excessive.

I see a lot of people that break up after one year, but when they pass that two year, then they're likely to go on because they have stuck through it. (Group 1)

Nevertheless there were also concerns that it would be difficult to settle on a particular length of time and that there would be confusion over whether the period should begin from the beginning of the relationship or when people begin cohabiting. It was also recognised that either would be difficult to prove:

This opens a can of worms because some people might claim they lived in a relationship with someone and it might not have been...maybe they were friends. (Group 1)

Another concern was that any particular time period would be arbitrary and might leave people ineligible by a matter of weeks or months. It was also suggested that time should not be an overriding factor, as a cohabiting couple could be in a committed and healthy relationship with shared responsibilities after a very short amount of time.

People can become ill very quickly and die, from a perfectly healthy relationship and then suddenly die. If you were trapped by that; like say put in a regulation, you know five years, and you were trapped by that, you would feel very aggrieved. (Group 2)

Conversely, it was also pointed out that people can split-up or drift apart irrespective of how long they had been together.

It is equally likely that you might be dealing with someone who's been together or married for 30 years but they absolutely loathe each other, you know, for the last 15 or something. (Group 4)

Given the potential limitation of the use of a minimum time period, other suggested indicators of commitment were sharing joint accounts or investments, buying a house and paying a mortgage together or other shared responsibilities. Once again, however, concerns were raised as to how a set of intestacy rules could be designed to account for these factors and whether sufficient evidence could be efficiently gathered to prove these other commitments were real. Within this context, it was argued that the state should not be using taxpayers' money to make judgements about the value or extent of people's personal relationships.

3.3 Children, descendants and other dependants

Two separate but interrelated grounds for considering children to be entitled to a share of the estate under the intestacy rules were identified: 'dependency' and 'bloodline'. Firstly, there was a concern that children needed to be looked after in the event of a parent's death, particularly if they are young. There was a belief that the deceased's estate should be used to ensure the children are raised as they would have been had one of their parents not died.

'[You need to] look after the children and spend [the deceased's wealth] on their schooling and everything, I think that's a priority.' (Group 1)

One argument put forward was that this could be better achieved if the intestacy rules considered the impact of the distribution of an estate on family stability. This was because there was a concern about pitting the relative rights of the spouse and partner against those of the children, particularly where they lived together as a family, as it may have the effect of causing conflict between family members. The situation was seen as potentially being further complicated in some non-traditional family situations, particularly where there were step-children although it was acknowledged it was not necessarily the case; some participants made it clear that in their own case step-children would be treated the same as children common to both partners. The section below on children in non-traditional families explores this further.

In addition to protecting children's well-being and future it was argued that the law should also protect something more abstract: what was viewed as an offspring's rightful inheritance and the principle that assets should remain 'within the family'. From this viewpoint, it was not considered important whether the children were minors or adults or needed looking after, as descendants should be entitled to benefit from the deceased's estate for the fundamental reason that they were the biological next of kin.

No matter how old the children are, I do believe they should have a stake in the claim... maybe part of it's, you know, biology, that it was that person's children and they should get a portion of it anyway. (Group 1)

These two principles underlying participants' views on the entitlement of children are not necessarily mutually exclusive, but they did impact upon participants' attitudes towards what should actually happen to an estate in different family structures. For participants concerned only with ensuring that the children are looked after, it was considered less of an issue who the deceased's estate was actually passed on to so long as the beneficiary is the most willing and able person to fulfil the deceased's responsibilities towards his or her surviving children. In these cases, even if participants believed that children were the priority, it did not necessarily translate into a view that children should always receive the deceased's estate directly. It was considered a priority that the

children were taken care of rather than inherit the estate. For participants concerned with biological links and issues of 'genetic' inheritance, children were viewed as the priority irrespective of the family situation. From this perspective, it was argued that the intestacy rules should always make direct provision for the children.

Children in non-traditional families

It was generally felt that children from the deceased's relationship at the time of death and children from any other relationships should be treated equally. However, it was argued that in most cases, it could not be assumed that the deceased's partner at the time of death would necessarily provide for any children from other relationships and so the intestacy rules should make provision for these children. In terms of step-children, one perspective was that the deceased's step-children should not have any automatic entitlement to the deceased's estate because biological links were considered to be most important in determining children's entitlement. In contrast, for those participants more concerned about children's well-being than biological inheritance, the situation was felt to be more complicated. If the step-child was living with the deceased as part of a 'nuclear family', then it was considered that it might be reasonable to assume that the deceased's wishes would be to treat biological and step-children equally. The potential difficulty identified with this position was that the step-child would also be entitled to inherit from both of his or her biological parents, which if both had re-married might see one child entitled to a share of up to four estates (or possibly more, in cases of remarriage).

Adult descendants

Participants who viewed the importance of the 'bloodline' as paramount felt that adult children should always be entitled to benefit from the deceased's estate. Other participants held a more flexible view and discussed a range of circumstances in which adult descendants might or might not be entitled. If the deceased left a surviving spouse or partner then, assuming that the partner could satisfy some of the conditions described in the previous section and that the adult descendants were self-sufficient, it was felt that in most cases the entire estate should go to the spouse or partner. However, if the relationship of the spouse or partner with the deceased was considered short-term then it was argued that adult children should be able to claim part or all of the estate. It was also suggested that if the adult descendants had a significantly greater financial need than the surviving spouse or partner then they should be allowed to challenge for part or all of the estate. The objection to this, though, was that the law should be based on principle not relative need.

Are we saying that if we were brothers and I blew all the money, no discipline, lived a life of decadence, whatever, and ----- worked very hard [so gets less]...No, I think it's a minefield, you should just divide it equally. (Group 4)

The exception to this view was if the adult descendant or any other relative had been dependent on the deceased due to a disability. In these cases it was felt that provision should continue to avoid any negative impact on the surviving dependent and that this should be stipulated in the intestacy rules because of the barriers these individuals would face in challenging any ruling.

3.4 Parents and siblings

The default position of participants was that parents and siblings should not be entitled to share in the estate where the deceased had a spouse or partner or surviving children or adult descendants. Where they did not, parents were seen as next in line on the basis of their biological relationship and because the parent-child relationship was considered more important than the relationship between siblings. This reflected the fact that it was assumed that parents would have given a considerable amount to the deceased throughout their life. Another argument for placing parents

next in line was that they were in a better position to know how to distribute an estate among other family members, possibly including siblings, and that their judgement could be trusted more than that of their siblings. Some participants felt that siblings should then come next, but there were also those who argued that siblings should never be entitled to share in each other's estates as they should have made their own life and family.

The situation was seen as more complicated where the deceased had a spouse or cohabiting partner but no children. In this context it was argued that a challenge might be made by the deceased's parents in order to retain the estate within 'the family or the bloodline'. This was considered to be particularly relevant if parents had contributed to the estate by buying or helping to buy the house, or some of the estate had been inherited previously from someone else along the bloodline. A second context in which a challenge by a parent might be considered justified was if they were acting on behalf of their grandchildren who were the children of the deceased but not the children of the deceased's surviving spouse or partner. In this case, participants argued that if the surviving spouse or partner was unwilling or unable to look after the deceased's children then the grandparents would have the right to challenge a rule that saw the entire estate go to the spouse or partner:

If I didn't have my stepson's best interest then my partner's parents would, so I think they'd be entitled to step in, and be able to contest it against me if, you know? (Group 2)

It was clear, however, that this entitlement to benefit from the deceased's estate was only on behalf of the deceased's children in order to protect either their well-being or their 'rightful' inheritance.

A third factor which, it was argued, should be taken into account in deciding whether a parent or sibling should be able to challenge the default distribution under the intestacy rules was their need for support. It was felt that if the deceased left only adult children then it may be that the deceased's parent(s) would have a greater need to benefit from the estate. This was seen as particularly relevant if a parent or sibling with a disability or illness had previously been cared for by the deceased. Finally, it was noted that it was not always the case that relationships with parents were closer and more supportive than those with siblings, and as a result siblings should also be able to challenge the distribution of the deceased's estate to the parents. Similarly, the fact that one parent could be more supportive than the other was seen as relevant.

And so it's hard to say, oh, because I get on real well with my mum, my dad's not in the country. My mum's supported me the whole time... It's like my dad hasn't been there so I wouldn't say, oh, you know, here's some money because you haven't given any money to me or my child.' (Group 4)

3.5 Other relatives, friends, carers and companions

Aunts and uncles, nieces and nephews, and cousins were considered as the relatives next in line if the deceased left no parents or siblings, although there was no discussion as to which of these types of relative would be considered as priority. There was, however, a range of views as to how far removed from the deceased a person could be and still be considered a potential beneficiary, as discussed in the next chapter. It was also felt that there are some occasions where these more distant relatives should also be able to challenge the default distribution under the intestacy rules, depending on the nature of their relationship with the deceased.

You could have two parents that don't really bother and then you could have a big family that, all your cousins have helped you for years to bring up your children. (Group 4)

Similarly, it was felt that companions, defined as someone who had lived with the deceased in his or her final years but not as a partner, might have an automatic right to the deceased's estate if they left no other relatives, or have the potential to apply to the court for some share of the estate because of the nature of their relationship.

They should be able to challenge if they've been living in your home as part of your family for a long, long time then...they're part of your family. (Group 4)

In addition to the nature of the relationship, it was argued that a companion would be justified in challenging the result of a strict application of the intestacy rules if they were in danger of being made homeless. The counterargument to this was that the estate should remain within the immediate family or the 'bloodline' even if the relationship between the deceased and any living relatives entitled under the intestacy rules was not very close.

A related issue concerned the potential entitlement of those who had cared for the deceased either through long-term illness or during serious illnesses up to the time of death. It was felt that, although an individual who was caring for the deceased in a professional capacity could have had a much closer relationship with the deceased than anyone else, they should not be able to challenge the intestacy rules because they were just doing their 'job'. In contrast it was felt that unpaid carers might be more justified in challenging for part of the deceased's estate, particularly if the individual was largely or entirely financially dependent upon them.

If you were actually a very close friend who actually had, had helped over ten or fifteen years and done a lot for the person when the family didn't bother I think there could be a case to challenge (Group 3)

However, there were reservations about this. One reservation was related to the fact that if an individual provides support or cares for somebody informally, they are doing so '*out of the goodness of their heart*' and should not expect to be compensated as a consequence. A second reservation was that it would be difficult to establish that such a relationship existed and then to quantify how much an individual should be entitled to on the basis of their caring activities. Furthermore, there was a concern that it might '*open the floodgates*' to claims by people who had cared only briefly for the deceased.

3.6 Evolving views

As noted in the introduction, the reflective nature of the focus group setting allows researchers to explore the diversity of perspectives on a particular issue and gain some understanding into how attitudes are formed and might be challenged. Participants brought to the groups their experiences of a wide range of family circumstances that, in addition to the amount of thought they had given to making a will or what would happen to their belongings after they died, tended to inform their initial responses to open questions about what should happen in cases of intestacy. Some participants had considered what would happen in their own case, even if they had not actually made a will, specifically because of their particular family circumstances. The participant below, indicative of the position of a number of people at the start of the groups, had given the issue a lot of thought without completing the process of making a will.

I thought about it [and] because of circumstances a couple of years ago I did do a will...it's actually somewhere lost in my house [and it's] not been signed so it's not, very good...Because of my children getting older and I lost my mum and she did not have a will and I just thought oh I need to get some clarification about what would happen, what I actually want, where I would want my children to be, who would get what. (Group 3)

Other participants had made a will as a consequence of their uncertainty about what would happen in their particular circumstances if they died intestate, while others had given it no consideration despite a clear awareness that their own family situation would most likely complicate matters in the event of their death.

The varied backgrounds and experiences of participants within the sample provided some opportunity to explore how perceptions of many of the participants were challenged by others in the group. Initial responses to what should happen in particular circumstances were often provided by a participant that identified with the scenario in question. Despite articulating a clear rationale for their views, perspectives were often revised on hearing about the experiences of other members of the group. An exchange between two participants in Group 2 around the relative rights of children from different relationships illustrated this dynamic. The first participant was concerned that an estranged daughter from her current husband's previous marriage would have rights to his estate equal to or above the rights of the children they had together were he to die.

There is no way that I would want this child that's been out there somewhere, to come and take my home from underneath me...Because my children have had their father, and we've been in a, you know, we've been in this relationship, and I wouldn't want my children's home to be taken away from underneath their feet by a person that's, could be anywhere in the world. (Group 2)

The initial attitude of this participant was that children from previous marriages should have limited rights if any to the estate of their parents if they are estranged and their parent is remarried into a new 'nuclear' family. This attitude, while not reversed, was revised upon hearing of a similar scenario from another participant whose son was adopted when he was very young. The participant had had no contact until the son was 26 but now the son is very much part of his life and he would want to treat the son equally to all his other children in the event of his death. This story from another group member allowed the original participant to think about other factors that might have prevented a relationship between her husband and his daughter and reconsider her position.

Because I think it's, at the end of the day it's the child, and it's not necessarily their fault they haven't been in touch. (Group 2)

She did not say that revising her opinion would not stop her writing a will to ensure that in her circumstances her wishes were adhered to, but it did enable reflection about whether this is what should happen in all circumstances. The acknowledgement of the initial participant that there are varying circumstances in all scenarios reflected a recurring dynamic that played an important role in developing the perspectives of the participants and groups on more specific questions around intestacy.

Not all perceptions, when challenged, were changed or even reconsidered. On a number of occasions throughout each of the four groups there were examples of participants holding fast to their initial opinions even when it went against the general consensus of the group. In one group a participant maintained throughout the discussion that a surviving spouse should have more legal rights to an estate than a surviving cohabiting partner, irrespective of the circumstances of both relationships, on the basis that there was no '*point in marriage if there's no legal difference in law between that and a partner*' (Group 3). Similarly, the importance in other groups to participants of an estate remaining '*in the family*' and inherited only '*down the bloodline to the eldest child*' was maintained despite an acknowledgement by participants in the group that different factors and circumstances could justify an estate being inherited by others.

An interesting point about these two instances is that the individuals held fast to these opinions regardless of the implications for their own situations. In the first case, the participant in question was not married and would potentially find her own situation complicated if in cases of intestacy unmarried partners had a lesser entitlement to their partner's estate than a spouse or civil partner. In the second case, this individual had previously been overlooked as his father's entire estate passed to an elder sibling. In these two cases, the individuals' attitudes were based on principles rather than reflecting personal advantage and appeared to be highly resilient.

4 Mechanisms

A key question for the research concerned the most suitable legal mechanism to be used in applying the above principles in cases of intestacy. Currently there exists a set of rules that are applied automatically in these cases but there is also provision for other potential beneficiaries to apply to court for provision from the estate that they would not be entitled to under the default intestacy rules (or more provision from the estate than they would receive under the rules). The advantage participants saw of having a set of rules that were applied consistently to everyone in cases of intestacy was that it would minimise conflict amongst potential claimants. Some participants cited cases in other countries where families have been left arguing over the deceased's estate, with implications for family stability. Although it was acknowledged that there was still the possibility of conflict even with a set of rules, it was felt that if the rules were clearly set out and better publicised then there could be 'no surprises' if a relative died intestate, and if people disagreed with these fixed rules then they would have the opportunity to make a will.

I think the answer is to publicise it a lot more because no one really knows too much about it... And that might get a lot more people to get their affairs in order. I mean none of us wants to but you wouldn't leave these then problems of being intestate. I know there's the chance of it but you'd cut down on the number of people in that situation if you pushed the rules it might inspire you to get a move on [making a will] (Group 4)

I guess the only way around it almost is to have some standard guidelines, and then it's up to people to make a will if they don't want to risk that. (Group 2)

Another argument for having a set of rules was to avoid 'intrusion' into people's private relationships by the state. Initially, some participants felt that all cases of intestate succession should be dealt with on a case-by-case basis rather than have a system of fixed rules that apply equally to all potential beneficiaries in every case. However, following lengthy discussions identifying the wide variety of permutations that could arise in such cases these participants tended to revise their view in favour of a fixed set of rules due to an increased awareness of the difficulty of collecting evidence for every single case.

Nevertheless, as discussed repeated in chapter 3, it was argued that it should be possible to challenge the results of a strict application of a set of rules because it was impossible for a set of rules to account for all eventualities.

Figure 1

<u>Basis for Intestacy Rules</u>	<u>Basis for Legal Challenge</u>
Reasonable assumptions	Exceptional circumstances
Illustrated by standard cases most easily legislated for	Deviations from standard cases not easily legislated for

As illustrated in figure 1, it was felt that the intestacy rules should be based on scenarios where there was some overlap of the deceased's responsibilities and obligations with the responsibilities and obligations of deceased's closest relationship. Where the rules resulted in the estate passing to an individual or individuals not able or willing to fulfil the obligations and perceived wishes of the deceased then a legal challenge was seen as more justified.

4.1 Distributing the estate

There was general agreement that intestacy rules would need to employ some sort of ranking system for the different types of potential beneficiary of the deceased's estate. Participants viewed a fair ranking as a system that would go from the 'next of kin' to more remote relatives. Some participants argued that this process should only go as far as cousins while others believed that the process should continue until a survivor is found irrespective of whether the deceased had ever met the beneficiary, primarily out of a concern that their estate should never go to the state.

An additional issue to be considered by the intestacy rules is how to actually distribute the estate among potential beneficiaries. There was an argument that was not something that could be fairly achieved within the rules themselves and that the entire estate should therefore be passed on to whichever potential beneficiary is the highest on whatever ranking system is employed.

I think the entire estate should just go down the line. I think if you start trying to divide it up that's when it becomes complicated. (Group 3)

This approach was reinforced where it was assumed that passing on the entire estate to the spouse or partner was the equivalent of an equal distribution, as the family was considered as one entity. However, those participants that believed there should always be specific provision for the children of the deceased, even if he or she left only surviving children of whom the surviving spouse or partner was also a parent, felt the estate should be split.

A range of ways of distributing the estate amongst the immediate family of either married or unmarried partners were mooted. Initial suggestions were that the estate should be split equally amongst all 'next of kin' or members of the immediate family.

If you died and you'd left no will and you are married and you've got dependent children then your estate should be shared between your spouse and your dependent children. (Group 3)

A second option was that half of the estate should go to the spouse or partner and the other half should be split between the children of the deceased, on the basis that some consideration should be given to the fact the spouse or partner would still retain some financial responsibility for the children:

I was thinking maybe it should be 50% for the spouse and then the other 50% split between the children, only because I feel that the spouse will end up spending a lot of their 50% share looking after the two children. (Group 1)

Again, this perspective rests on an assumption that the surviving spouse or partner is willing and able to continue to fulfil the deceased's obligations to their children. Those who did not feel this was a reasonable assumption to make, argued that the distribution should be in favour of the children. In some cases it was felt that the children would need more money to secure their future than the spouse or partner, and so the spouse or partner should be provided only with the minimum necessary to maintain his or her current lifestyle while the remainder should be split between the deceased's children.

I think the children should come first though in terms of their futures, how much you're putting away for them. And then you think about the spouse not necessarily second but you don't, the spouse doesn't necessarily need the same amount, but...some accepted standard of living. (Group 4)

It is worth noting that participants supporting this kind of distribution tended to see children as a distinct priority as separate from their entitlement based on being part of the immediate family. An alternative view was that the deceased's estate should provide a standard and basic level of protection for the children and that all the remainder should go to the spouse or partner. With both of these alternatives, the subjectivity involved in determining an accepted living standard or level of maintenance was noted. If the estate was split between spouse or partner and the children, there were questions about how the children's share of an estate could be protected until they were old enough to make meaningful choices in how to use it. The idea of holding the child's share in trust until he or she reached a responsible age was one solution offered to this challenge.

As noted in chapter three, there was a belief that the intestacy rules should make provision for any children from the deceased's relationships other than with the surviving spouse or partner, particularly if they are not considered part of the deceased's immediate family at the time of death. A number of options were suggested as to how this could be achieved. One option was that the estate should be split only between the spouse or partner and the children from the other relationship(s), though there was little discussion about how this would actually work in practice and the kind of proportions that would be involved. The option is based on the assumption that the surviving spouse or partner would protect the interests of any of the deceased's children who were considered part of the immediate family but not necessarily a child from another relationship that perhaps lived elsewhere. An objection to this suggestion was that it should not be assumed that the surviving spouse or partner would always protect the interests of any of the deceased's children, and it was argued that an alternative approach was to split the estate between the spouse or partner and all of the deceased's biological children.

The family home

A further complication to achieving a fair distribution was the nature of a particular estate, most notably if the majority of the estate was bound up in the family home. There were concerns about a situation in which surviving members of the immediate family were forced to sell the family home in order to achieve a particular distribution of the estate.

F1: I think the home's got to be protected for the person who is the survivor.

F4: Yeah, the surviving person should remain in the house, because otherwise you're just going to get more homeless people aren't you?

F1: It [family home] should be theirs [spouse's or partner's] if there are any children that are dependent on them, you know they've got to make sure [cough] give them a home if you like.

In fact some participants considered that it was so important for the family home to remain with the spouse or partner and children for reasons of family stability, that they argued that only other elements of the deceased's estate, savings or personal belongings, should be considered for distribution. A variation on this view was that in every case, the family home should pass to the surviving spouse or cohabiting partner as irrespective of financial arrangements, the buying of a house is a partnership between two people and the children shouldn't benefit from this while the spouse or partner remains alive:

'She paid for, she embarked on the deal with him to buy the house, you know they did it together and, I mean my guess is if they give her the house she might say, okay, well you can take my [£]33,000 and divide that you between you as well, you know.' (Group 2 – Vignette 3)

Other participants suggested that while the home should not have to be sold immediately, it could be sold once the children had become independent to ensure that all potential beneficiaries received their full entitlement from the deceased's estate. The difficulty identified with this approach was that was still possible that the surviving spouse or partner could be left homeless if their share

of the house was not enough for them to afford to purchase the family home or acquire alternative accommodation. Bearing this in mind, other participants suggested that in some circumstances the surviving spouse or partner should be able to live in the family home until their death, at which point it would pass to the children of the deceased. Some participants saw this as relevant in cases where the deceased left only adult descendants though others believed this to be fair even if the descendants were children at the time of death.

5 Conclusions

As noted in the introduction to this report, this study aimed to map the range of views on intestacy held by members of non-traditional families. Consequently, the conclusions the report is able to make are inevitably rather broad. They focus on the set of underlying principles upon which the participants formed their views on intestacy and then the range of ways in which these principles manifested themselves as participants addressed a number of specific questions of greatest interest to the Law Commission.

Participants generally felt that it was sensible to have a set of rules in place to determine what happens to an estate when people die without making a will. Even those who were concerned that a system treating all cases the same could result in unfair outcomes in certain circumstances ultimately conceded that it would be impractical and costly to deal with every case through court proceedings. Equally, it was generally agreed that there were circumstances in which potential beneficiaries should be able to challenge the strict application of these rules. There was, of course, a range of views about what the rules should actually say and in what circumstances and by which individuals a challenge could be made. Despite this diversity, it was apparent that participants felt that the intestacy rules and any court proceedings challenging the application of those rules should aim to minimise the negative impact on the deceased's immediate family and allow them to continue living their lives in a manner as close as possible to that which existed before the death of their close relative. This concern manifested itself in a range of different views on the meaning of immediate family. Equally, participants varied in what they believed could be reasonably assumed about the behaviour of members of that immediate family with respect to continuing to fulfil the deceased's responsibilities and obligations. It was on this that basis participants determined their views on the following key research questions:

- *Married partners and unmarried partners:* One view was that unmarried partners should never be treated equally in law to married partners as it would dilute the value of marriage itself. Another, more complex view was that there could be equal treatment in law if unmarried partners satisfied a combination of a number of conditions. Living together was generally seen as necessary condition, though participants' views varied on what other factors should be considered including having a child together, being in a long-term relationship (and how long that relationship would need to be to qualify) or buying a house together or sharing other financial responsibilities.
- *Children from other relationships:* One view was that the deceased's direct descendants should all be treated identically on the basis that they have the same genetic relationship with the deceased. It was generally agreed that some provision should be made in the intestacy rules to ensure that any children from another relationship are taken care of. This meant that the existence of a child from another relationship would preclude the spouse or partner from receiving the entire estate. A related view was that children from previous relationships should actually be entitled to a greater share than any children from current relationships given that the latter would also benefit from that received by the spouse or partner (i.e. their surviving parent). Others felt that this should be avoided as it could potentially cause conflict.
- *Family Home:* Underpinned by a concern to minimise the negative impacts of the deceased's death, participants felt strongly that the family home should always, initially at least, go to the surviving spouse or cohabiting partner or any relative, friend or companion who might be made homeless by any other arrangement. There were a diverse set of

viewpoints as to whether the house should be given entirely to the spouse or partner or whether children should be given a stake in the property that could be realised only when they reached a certain age or on the death of the surviving spouse or partner. Participants were concerned either with protecting what they viewed as the children's rightful inheritance on the one hand or, on the other hand, ensuring that the family is not broken up or somebody made homeless by enforcing the sale of the family home.

6 Appendices

6.1 Appendix 1 – Topic Guide

P6225 Intestate succession and family provision in non-traditional families

Topic guide v11

[Final revision 10/02/2009]

Research objective

To explore what people from non-traditional families think should happen to the property and belongings of people who die without making a will.

Note: The aim is to encourage participants to try and think about the principles on which these rules should be based and how they should be translated into law rather than focus on their particular personal experiences.

The broad research objectives that these discussions will address are:

- Map the range of views on **who should decide** what happens to an individual's estate when they die in cases of intestate succession and when a will is made
- Map the range of views on **rules determining who** gets a share of a particular estate and who can challenge those rules
- Map the range of views on **what should happen to different assets** from a particular estate
- Explore the **underlying principles** that participants believe should determine the rules for intestate succession and the circumstances in which these can be challenged
- Explore attitudes towards a range of **different mechanisms** that allow the translation of the above principles into law
- Explore attitudes towards how the different assets of an estate **should be distributed**

As this is an exploratory study, we wish to encourage participants to discuss their attitudes in an open way without excluding issues which may be of importance to individual participants and the study as a whole. Therefore, unlike a survey questionnaire or semi-structured interview, the questioning will be responsive to participants' own contributions.

The following guide does not contain pre-set questions but rather lists the key themes and sub-themes to be explored with each group of participants. It does not include follow-up questions like 'why', 'when', 'how', etc. as it is assumed that participants' contributions will be fully explored throughout in order to understand how and why certain attitudes arise. The order in which issues are addressed and the amount of time spent on different themes will vary between different groups although we will aim to focus on encouraging discussion around the key objectives of the study.

Italic text is instruction for the group facilitator.

1. Introduction

- Introduction of self and NatCen
Introduce self and Natcen. Explain this a research study exploring what should happen to people's property and belongings when they die without making a will and when a will is made, what are circumstances in which it could be challenged
- Introduce the Law Commission
The study is being undertaken for the Law Commission which is a statutory independent body set up to keep the law under review and to recommend reform where it is needed. This research aims to inform their upcoming review of the law in this area
- Timetable for research and review
A report on this research will be delivered to the Law Commission at the end of March. The Law Commission will publish a Consultation Paper in November 2009, and a final Report is planned for the autumn of 2011. These publications will be available on the Law Commission website and you will, of course, be welcome to respond to the consultation in the autumn.
- Explain confidentiality and anonymity
Participation entirely voluntary, personal details and data not passed outside the two research teams
- Explain terms of contract for session
Respect all views, language, turn-taking
Explain recording, length (1½ -2 hours) and nature of discussion, outputs/reporting and data storage issues
- Check whether they have any questions
- Check that they are happy and turn on recorder

2. Background and general discussion about inheritance

Aims: To map demographic information about group participants and tease out their initial thoughts around testamentary freedom and inheritance

- Group introductions - Name, personal circumstances, what do on daily basis
- Ask whether the group has considered what will happen to their property and property's if they were to die

Icebreaker -- Use Vignette 1 here --

- In general, should people making a will have complete freedom to leave their estate as they see fit or should it be possible to challenge the provisions which people make in their will

Probes
➤ In what circumstances it should be acceptable to challenge a will
➤ What factors should be considered

3. General views on what should happen in cases of intestacy

Aim: to start the group thinking about the main issues around who should get what and why and the factors that influence these decisions

*Explain that here we are focusing on cases where no will is made, i.e. where people die intestate. Currently the law has a set of rules that decides who gets what. We are interested in hearing **your** views on who should get what automatically.*

BUT...those rules can be legally challenged and the courts asked to decide so there is some degree of flexibility. So we are also interested in hearing your views on the circumstances in which people should be able to make a legal challenge in cases where a person dies intestate. You need to bear in mind that a legal challenge is costly and can affect the pot of money that is available.

- What they think should happen in cases where someone dies without making a will

Probes
<ul style="list-style-type: none">➤ To what extent there should be clear rules about who inherits what➤ Should there be circumstances in which someone always inherits certain items , e.g. family home, personal belongings➤ How much flexibility they think there should be, and why➤ Who should be able to make a challenge➤ What sorts of things should be challenged: e.g. family home, personal belongings, business interests etc.

The following two sections are highly interdependent and we can begin with whichever arises from the above discussion and move between the two sets of questions and prompts

-- Introduce some or all of Vignettes 2-4 in these two sections --

4. Who might be eligible for a share of someone's property and belongings when they die without making a will

Aims: To explore map participants' views on the range of people that could be considered eligible and the nature of these relationships

We are now going to consider views on the rules for which people should automatically receive the property in cases where the deceased dies intestate and the circumstances in which certain groups should be able to challenge these rules.

→ Remember there is always a limited amount to be distributed and often a small amount

a) Eligibility of spouse and partners

- To what extent should each of the following be eligible for a share of the property, and why
 - Spouse (including Civil Partner)*
 - Spouse living apart*

Cohabitants (with/without children)

- Is that 'always' or 'sometimes'
 - Should they have an automatic right to a claim or should it depend on other factors: what & why
- What other factors might be used to determine their right to make a claim

Prompts
<ul style="list-style-type: none">➤ Legal standing of the relationship➤ Length of the relationship➤ Dependence on the deceased➤ Living under the same roof as the deceased➤ Any other factors

b) Eligibility of descendants or others dependent upon the person that has died

- What should be the relative right to a claim on the property of each of the following
 - Children from the relationship of the deceased with the spouse*
 - Children of the deceased from another relationship*
- Is that 'always' or 'sometimes'
 - Reasons for their views
- What circumstances might affect their entitlement to claim

Prompts
<ul style="list-style-type: none">➤ Their relationship to the deceased (ie. blood relative or not)➤ Whether living with the deceased or not➤ Whether young or adult children➤ Level of dependence on the deceased➤ Their own financial situation

c) Eligibility of other family, friends or carers

- What should be the rights of each of the following to make a claim
 - Parents*
 - Siblings (brothers & sisters)*
 - Other relatives*
 - Those who cared for the deceased*
- Is that 'always' or 'sometimes'
 - Reasons for their views
- In what circumstances should they have a right to make a claim, and why

Prompts
<ul style="list-style-type: none">➤ Blood relationship or not to the deceased

- | |
|---|
| <ul style="list-style-type: none"> ➤ Nature of their relationship to the deceased ➤ Relative need/affluence ➤ Degree of dependence on the deceased |
|---|

5. Factors that determine eligibility

Aim: To explore some of the underlying principles that determine participants' views on who should be eligible to share in the estate and how these factors are weighed up

We are now going to consider some other things that might be taken into consideration when considering how the property/estate is distributed in cases where people die intestate

a) Size and composition of estate

- How important is the size of the estate as to who should be eligible to claim
 - If larger, should more people be eligible
- To what extent does where the estate was inherited from affect people's right to claim
 - E.g. relative rights of the joint children and the deceased's children from another relationship and the rights of the spouse
- How might these factors affect what they could be eligible to claim from the estate

Prompts

- | |
|---|
| <ul style="list-style-type: none"> ➤ Family home ➤ Possessions (with sentimental value) ➤ Other assets incl. pensions, insurance policies etc. |
|---|

b) Relative financial positions of potential claimants

- What difference should the relative financial positions of potential claimants make to a claim, e.g.

Where claimant financially self-sufficient

Where claimant has suffered financially as a result of the death of the deceased

Where deceased had an obligation to provide for the maintenance of the claimant

Probes

- | |
|--|
| <ul style="list-style-type: none"> ➤ Should someone's death be allowed to cause others to be worse off ➤ Should subsistence or previous living standards be maintained ➤ Is there an 'objective' state of maintenance that should be used |
|--|

c) Relationship to the deceased

- To what extent should the nature of the relationship to the deceased be a factor
 - Blood relations*
 - Live-in relation/friend*
 - Relations living elsewhere (proximity)*
 - Previous caring duties*

Probes
<ul style="list-style-type: none"> ➤ Should the estate be kept in the 'family' ➤ What does the 'family' mean ➤ How to determine closeness ➤ Should there be reward for caring duties ➤ Extent to which supposed wishes of the deceased should be considered

d) VIGNETTES

INTRODUCE VIGNETTES 2 -4 AT THIS STAGE IF NOT ALREADY DISCUSSED

6. How estates should be distributed among different claimants

Aim: To allow participants to consider how a limited pot of property and belongings should be split among those seen as eligible – might need explanatory detail about limited pot, most estates small, idea of statutory legacy etc...

Explain that there is always going to be a "limited pot" available when it comes to the distribution of the estate and that court proceedings can be costly, financially and emotionally -- use vignette 5 here --

- Given the fact that there is always going to be a "limited pot", who should have priority, and why?
- Ways of distributing the different parts of the estate
 - Proportional vs nominal amounts*
 - Property*
 - Belongings*
 - Residual estate*

Probes
<ul style="list-style-type: none"> • Should there be different rules/considerations for different parts of the estate? • Should any items be excluded from the estate, 'non-inheritable'

- The idea of nominal value statutory legacy

The principle

The amount

Made of property or other assets

Probes
<ul style="list-style-type: none"> • Should this be available only to a spouse • Should it be able to be challenged • Should it be fixed and how kept up to date

- Can these factors be used to develop a hierarchy in different circumstances?

Probes
<ul style="list-style-type: none"> • Should the hierarchy be fixed • Should the highest surviving relative get everything

7. Closing thoughts and next steps

Aims: To discuss any other areas or questions the participants want to discuss, reiterate ethical issues and let them know who to contact for further information

- Any other areas of importance to cover
- Any questions now for research team

AND FINALLY

- *Thank respondents*
- *Reassure about confidentiality*
- *Thank them for their time and hand out information leaflets with contact details*
- *Make incentive payments and obtain signed receipts*
- *Draw attention to NatCen contact details for ethical considerations*

6.2 Appendix 2 – Vignettes

Vignettes for intestacy focus groups

These are to be used flexibly as when needed in the discussion although Vignette 1 has a set place near the beginning of the topic guide. The values can be introduced later on when we talk more about distribution and can also be changed to see how this affects people's thinking

Vignette 1 – testamentary freedom

Narrative	Variation 1	Variation 2
Vera dies, aged 75	-	-
She owns the family home worth £250,000	-	-
Has savings worth £50,000	-	-
Leaves no surviving spouse or children	Leaves two adult children who are independent but not well off	Leaves surviving husband aged 80
She leaves the entire estate to her favourite charity	-	-
<p><i>To what extent should a will be challenged in these circumstances? To what extent should the needs of relatives be taken into account? To what extent should wishes of deceased be taken into account?</i></p>		

Vignette 2 – spouses and partners/civil partners (use separately for Group 1 and groups 2-4)

Narrative	Variation 1	Variation 2
Martha dies aged 40 and leaves behind husband Ben	Martha and Ben were unmarried but cohabiting	Martha and Ben were unmarried but cohabiting
Martha owned the family home outright worth £450,000	-	-
They have joint savings of £40,000	-	-
No children		They have two children together

What is the relative importance of type of spouse/partner relationship in deciding who should get what?

And why...what is the essence of these relationships that makes them more/less significant?

What factors should we use to decide this – length of relationship, living-in, welfare of family members?

How is this affected by the composition of the estate?

Vignette 3 – children, step-children and grandchildren

Narrative	Variation 1	Variation 2
Jack dies aged 50 and leaves behind wife Jill		
Joint home ownership £450,000		
Jack's savings account/share portfolio £100,000		
Leaves two young children from the marriage	Leaves two young children, one from Jack's previous relationship	Leaves two adult children, one dependent upon payments from Jack

Does it depend on whether the child is from the current marriage, whether they lived with the deceased or are dependent upon the deceased?

How do these circumstances affect who should be able to challenge the rules?

What is the importance of relative financial need/situation?